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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

M.R.,

Petitioner,

v.

THE SUPERIOR COURT OF  
SAN BERNARDINO COUNTY,

Respondent;

SAN BERNARDINO COUNTY  
CHILDREN AND FAMILY SERVICES,

Real Party in Interest.

E050173

(Super.Ct.No. J230110)

OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Wilfred J.

Schneider, Judge. Petition denied.

Brian Huerter for Petitioner.

No appearance for Respondent.

Ruth E. Stringer, County Counsel, and Dawn M. Messer, Deputy County Counsel,  
for Real Party in Interest.

Petitioner M.R. (Mother) filed a petition for extraordinary writ pursuant to California Rules of Court, rule 8.452, challenging the juvenile court's order setting a Welfare and Institutions Code<sup>1</sup> section 366.26 hearing as to four-month-old G.R. Mother contends: (1) There was insufficient evidence to support the jurisdictional allegations under subdivision (e) of section 300; and (2) the juvenile court erred in denying her reunification services under section 361.5, subdivision (b)(5) and (b)(6). We reject these contentions and deny the writ petition.

## I

### FACTUAL AND PROCEDURAL BACKGROUND

The baby came to the attention of San Bernardino County Children and Family Services (CFS) in November 2009 following an immediate response referral from Pomona Valley Hospital, alleging physical abuse of the then four-week-old baby. The baby had multiple bilateral rib fractures on each of her sides. Mother and A.R. (Father)<sup>2</sup> had no explanation as to how the baby had sustained the injuries. Nonaccidental trauma to the baby was suspected by doctors. A few days prior to taking the baby to the hospital,

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<sup>1</sup> All future statutory references are to the Welfare and Institutions Code unless otherwise stated.

<sup>2</sup> Father is not a party to this appeal.

Mother and Father had heard a “crackling sensation” in her back every time they picked her up, but did not take her to the hospital at that time.

Upon further investigation, Father stated that he had accidentally stepped on the baby during the night. He explained that he could not see the baby in the dim light but as soon as he felt something under his feet, he withdrew his foot. He also stated that the baby did not cry and that after he picked her up and fed her she fell back to sleep. He did not tell Mother about the incident. Upon learning of this information, the social worker observed Mother’s expression “changed from shock to anger.” Mother confronted Father for not telling her about the incident so the baby could have received immediate care.

Mother informed the social worker that she had observed Father handle the baby roughly; and that she had seen a bruise on the baby’s cheek about two weeks prior. Father claimed that he had left a “hickie” on the baby’s face. He also stated that Mother was trying to “restrict him from the baby.” On another occasion, Mother saw a bruise on the baby’s forehead, but Father claimed the injury was caused when Mother had accidentally dropped her cellular telephone onto the baby. The baby was taken into protective custody.

On November 24, 2009, CFS filed a petition pursuant to section 300, subdivision (b), on behalf of the baby. The baby was formally detained the following day at the detention hearing and placed in a confidential foster home.

On November 25, 2009, Dr. Amy Young at Loma Linda University Medical Center emergency room conducted additional tests and X-rays on the baby, which

revealed additional injuries consistent with nonaccidental trauma. Dr. Young stated that Father's explanation of stepping on the baby was inconsistent with her injuries. She believed Father was being untruthful. Dr. Young explained that "these kinds of fractures are typically caused by gripping around the chest and squeezing front and back together." She also noted that the baby had sustained about 15 rib fractures and that the rib fractures would have caused the baby to be in "great pain" with even the "slightest movement," or "acute pain" with each breath the baby took. She further reported bleeding around the rib fractures, which was consistent with soft tissue hematoma near the left lung. Additionally, a part of the baby's lung had collapsed, making it difficult for the baby to breathe. A skeletal survey of the baby also revealed that she had a "buckle fracture of the distal right femur [thigh area] and metaphysical corner fracture," which is caused by yanking and twisting a baby. Dr. Young believed "this was a 'classic case of child abuse.'"

Dr. Young also reported that the baby had lacerations and abrasions in her mouth, which were consistent with forced feeding or fingers to the back of the mouth. Mother claimed to have noticed the lacerations in the baby's mouth but believed it to be some kind of infection and did not obtain any medical advice. Mother informed the doctor that she also heard the crackling sounds, which were caused by two broken pieces of the rib rubbing against each other, but ignored it for three days until the paternal aunt ordered the parents to take the baby to the hospital. She further stated that the baby had been vomiting since she heard the crackling noise. Mother did not believe Father's story of

stepping on the baby, but she did believe Father squeezed the baby. She admitted that she had concerns for how Father cared for the baby prior to this event, and described him as being ““too rough”” with the baby. She had noticed bruises to the baby’s face when the baby was two weeks old and after being in Father’s care. She had told Father about 10 times that he was being ““too rough”” with the baby since she was born; however, he did not stop. She informed an investigating detective that she did not “trust” Father “too much” because of how he handled the baby. Father admitted to the detective that he had squeezed the baby.

Mother stated that she had told Father that she would leave him once the baby was returned to her care, but then changed her mind when he apologized and said he would communicate better with her. She further indicated that she loved Father and wanted to have more children with him. When the social worker asked Mother why she would allow Father to be the primary caretaker throughout the night knowing he did not handle the baby well, Mother replied, ““he’s her father, I can’t watch him all the time.””

Father acknowledged that Mother “was always telling him to take it easy with the baby,” and that she would be upset at him for holding her “too tightly or squeezing her.” When the social worker asked Father if he ever listened to Mother’s advice in handling the baby, he replied “that he would stop but then would do it again.”

On December 14, 2009, CFS filed an amended petition pursuant to section 300, subdivisions (a) (serious physical harm), (b) (failure to protect), and (e) (severe physical abuse of child under the age of five). In general, the amended petition alleged that

Mother knew or should have known about the abuse and failed to adequately protect the child. The social worker recommended the allegations in the amended petition be found true and that the parents be denied reunification services.

The contested jurisdictional/dispositional hearing was held on February 2 and 4, 2010. Father chose to exercise his Fifth Amendment right and refused to testify due to an ongoing criminal investigation. Mother testified that she and Father had ended their relationship in January 2010; that they were living separately; that she was no longer in love with him; and that she did not intend to have a relationship with Father in the future. She was gainfully employed and regularly visited the baby. Since the detention hearing, Mother had participated in individual counseling only; she had not attended any parenting classes.

Mother acknowledged that Father had been rough with the baby, but she did not believe he would harm the baby because she trusted him. She described several incidents of Father being too rough with the baby since the baby was two weeks old: rocking and swinging the baby too hard; holding her swaddled in one hand; and pinching her cheeks hard enough to change color. She also stated that she had noticed a bruise on the baby's cheek and did not believe Father's story concerning the bruise. Despite hearing the "clicking sound" and noticing the baby vomit, Mother waited three days before taking the baby to the hospital. She did not believe it was an emergency at that point until the paternal aunt told her to immediately take the baby to the hospital. She later acknowledged that it was a mistake not to take the baby to the hospital immediately when

she saw the bruising and injury to the baby's mouth. She denied force-feeding the baby or causing the injuries in the baby's mouth, and believed Father caused the injuries even though she had never seen Father get frustrated with feeding the baby. While Mother claimed not to have seen Father get angry or frustrated with the baby, she admitted that Father had a problem controlling his anger. She further noted that Father would hug her and squeeze her "really hard," that it hurt, and that she would have to tell him to stop.

The social worker also testified and maintained Mother should not receive reunification services. She did not believe Mother had the maternal instincts to care for the baby and that Mother added to the baby's injuries by continually moving her. The social worker also noted that although Father had indicated that he had caused the rib injuries to the baby, there were other injuries that were unaccounted for and Father had denied causing those injuries. The social worker acknowledged that Mother had been cooperative; that Mother and Father had one separate visit; that the baby was healing well in foster care; and that the baby did not require any special medical needs. She was, however, concerned that Mother and Father intended to get back together. Father had disclosed during a visit that he and Mother were "just on pause."

Following arguments from counsel, the court found the allegations in the amended petition to be true and denied reunification services to both parents under section 361.5, subdivision (b)(5) and (b)(6). The baby was declared a dependent of the court and maintained in her foster care with transitional visits granted to the maternal grandmother. The section 366.26 hearing was set for June 4, 2010.

## II

### DISCUSSION

#### A. *Jurisdictional Allegations*

Mother contends her conduct did not provide basis for jurisdiction under subdivision (e) of section 300. We disagree.

We review the juvenile court's jurisdictional findings under section 300, subdivision (e), under the substantial evidence standard of review. (*In re E.H.* (2003) 108 Cal.App.4th 659, 669.) Under this standard, we review the record to determine whether there is reasonable, credible, and solid evidence to support the juvenile court's conclusions, resolve all conflicts in the evidence, and draw all reasonable inferences from the evidence in support of the juvenile court's orders. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.)

Section 300, subdivision (e), accords the juvenile court jurisdiction over a child if “[t]he child is under the age of five years and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the child. For the purposes of this subdivision, ‘severe physical abuse’ means any of the following: any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death; any single act of sexual abuse which causes significant bleeding, deep bruising, significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding,



deep bruising, significant external or internal swelling, bone fracture, or unconsciousness; or the willful, prolonged failure to provide adequate food.” (§ 300, subd. (e).)

*In re Joshua H.* (1993) 13 Cal.App.4th 1718 (*Joshua H.*), interpreted this statute to require the department to prove three elements to establish jurisdiction under this subdivision: (1) there is a minor under the age of five; (2) who has suffered severe physical abuse as defined in section 300, subdivision (e); (3) by a parent or any person known to the parent if the parent knew or reasonably should have known that the person was physically abusing the minor. (*Joshua H.*, at p. 1727.) Mother does not dispute that elements (1) and (2) were satisfied, but disputes that element (3) was satisfied.

In *Joshua H.*, *supra*, 13 Cal.App.4th 1718, an infant boy was repeatedly beaten by the mother’s live-in boyfriend who would get frustrated with the baby and was unable to control his emotions. (*Id.* at pp. 1722-1723.) The mother contended the case was not within section 300, subdivision (e), because she did not know how severe the abuse was although she was aware her boyfriend was hitting her son. The court rejected her contention. “When, as here, an infant suffers severe physical abuse at the hands of someone other than a parent . . . [t]he subdivision does not require the parent’s actual or constructive knowledge that the minor in fact suffered severe physical abuse within the statutory definition. Indeed, several of the listed injuries, such as bleeding (internal), internal swelling, and bone fracture, may not be visible; they may be discovered only after medical examination or testing. We do not believe the Legislature intended to so limit the reach of the statute.” (*Joshua H.*, at p. 1729.)

In *In re E.H.*, *supra*, 108 Cal.App.4th 659, the appellate court confirmed that a true finding under section 300, subdivision (e), does not require that the parent have actual knowledge that the child is being abused. Rather, the court stated that “the only requirement is that they reasonably should have known.” (*In re E.H.*, at p. 670.) In that case, the appellate court agreed with the social services agency that “a ‘res ipsa loquitur’ type of argument” can support a jurisdictional finding under section 300, subdivision (e): “There was severe physical abuse of a child under five (E.’s broken bones) and the child was never out of her parents’ custody and remained with a family member at all times; therefore, [the parents] inflicted the abuse or reasonably should have known someone else was inflicting abuse on their child . . . . [This is] the only reasonable conclusion which may be drawn from the evidence . . . .” (*In re E.H.*, at pp. 669-670, fn. omitted.)

Mother in our case concedes that her baby suffered severe abuse and that she came within the meaning of section 300, subdivision (e), but with respect to Father’s conduct only—not hers.<sup>3</sup> She attempts to distinguish *Joshua H.* by insisting that the record simply does not support a finding that Mother knew that her child was being physically abused. She notes that she did not even know of any severe injuries until after the baby was removed from her care or that Father would intentionally harm the baby.

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<sup>3</sup> We note that Mother also does not dispute the juvenile court’s other jurisdictional findings that the baby was a person described by section 300 subdivisions (a) and (b). An appellate court can affirm a juvenile court’s jurisdictional finding if the evidence supports any one of the statutory bases for jurisdiction. (*In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875.) Mother nevertheless urges us to address the merits of her arguments because she appears to claim to have been prejudiced by the finding under section 300, subdivision (e), for the purpose of denying her family reunification services.

Assuming, without deciding, Mother was not the abuser of the unaccounted injuries, such as the baby's fractured femur and lacerations to the mouth, the evidence before the juvenile court demonstrated that Mother reasonably should have known that Father was physically abusing the child. Mother knew Father was rough with the baby and had problems controlling his anger. She also was concerned with Father's handling of the baby and told an investigating detective that she did not trust Father handling the baby. Prior to the dependency or the baby's hospitalization, Mother had observed Father mishandling the baby on multiple occasions and had noticed inexplicable vomiting, bruising to the baby's face, and injuries in the baby's mouth. In fact, Mother had to continually tell Father to stop handling the baby in a rough manner and, despite Father's denials, Mother immediately knew that he had caused the baby's 15 fractured ribs. Even if we accept Mother's testimony that she was unaware or she did not hurt the baby, knowledge of Father's rough handling of the baby, the bruising and multiple lacerations in the baby's mouth during the four-week duration of her life, the extreme pain the baby felt that was communicated through her crying every time she was moved, and the crackling sensation heard from the baby's back, if nothing else, would have lead any reasonable parent to know that the baby was being mistreated.

Applying the substantial evidence standard in reviewing a juvenile court's jurisdictional finding, we conclude that there clearly was substantial evidence to support the juvenile court's finding that Mother's conduct fell within subdivision (e) of section 300. (See *In re E.H.*, *supra*, 108 Cal.App.4th at p. 669.)

B. *Denial of Reunification Services*

Next, Mother contends the juvenile court erred in denying her reunification services under section 361.5, subdivision (b)(5) and (b)(6).<sup>4</sup> Again, we disagree.

We review an order denying reunification services pursuant to section 361.5 for substantial evidence. (*Amber K. v. Superior Court* (2006) 146 Cal.App.4th 553, 560 [Fourth Dist., Div. Two].)

Section 361.5, subdivision (b)(5), provides that reunification services need not be provided to a parent when the child was brought within the jurisdiction of the court under subdivision (e) of section 300 because of the conduct of the parent. Under subdivision (c) of section 361.5, the court shall not order reunification in this situation unless it finds that, based on competent testimony, those services are likely to prevent reabuse or continued neglect of the child or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent.

There is no evidence here to indicate the baby is closely and positively attached to Mother. The baby was merely four weeks old when she was removed from Mother's custody. The social worker testified that she did not believe Mother had the maternal instincts to care for the baby and that Mother added to the baby's injuries by continually moving her. The social worker was also concerned that Mother's intention was to reunite with Father. Mother had recently moved out and only had one separate visit with the

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<sup>4</sup> As the parties point out, it is unclear based on the court's ruling whether the court denied services under section 361.5, subdivision (b)(5) or (b)(6). We will conduct an analysis under both subdivisions.

child. She also had indicated that she wanted more children with Father. Moreover, Father had disclosed during a visit that he and Mother were “just on pause.”

Likewise, the juvenile court was not presented competent testimony to show that reunification services would prevent reabuse or continued neglect. Mother had not participated in any parenting classes since the detention hearing, but she had participated in individual counseling. There was no competent testimony the individual counseling sessions were likely to prevent reabuse or continued neglect. There was no competent testimony to suggest that Mother had benefitted from the therapy.

It was Mother’s burden to persuade the court to exercise its discretion under section 361.5, subdivision (c), and grant her services despite the fact her conduct caused the baby to suffer severe physical abuse. (§ 361.5, subd. (b)(5); *Raymond C. v. Superior Court* (1997) 55 Cal.App.4th 159, 163.) It was up to Mother to persuade the court that reunification services were likely to prevent the baby’s reabuse or continued neglect or that the denial of services would be detrimental to the baby.

In light of this record, the juvenile court did not err in denying Mother services pursuant to section 361.5, subdivision (b)(5).

Denial of services was also proper under subdivision (b)(6) of section 361.5. That provision applies to children who have suffered severe physical harm by a parent or guardian and the court makes a factual finding that it would not benefit the child to pursue reunification services with the offending parent or guardian. The subdivision also

provides that a finding of severe physical harm may be based on deliberate and serious injury to the child by an act or omission of the parent or guardian.

Mother argues that section 361.5, subdivision (b)(6), is inapplicable because the baby's injuries were not caused by her or she was not the offending parent for whom the statute was intended. But the rationale of *Joshua H.*, *supra*, 13 Cal.App.4th 1718, is equally applicable here. Mother had knowledge of the abuse, and her omission in failing to seek prompt medical treatment for the seriously injured baby would be a sufficient basis for the application of section 361.5, subdivision (b)(6).

### III

#### DISPOSITION

The petition is denied.

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RICHLI  
J.

We concur:

RAMIREZ  
P.J.

KING  
J.